

# **Exhibit A**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**IN RE: NATIONAL COLLEGIATE  
ATHLETIC ASSOCIATION STUDENT-  
ATHLETE CONCUSSION LITIGATION**

MDL No. 2492

Master Docket No. 13-cv-09116

Judge John Z. Lee

Magistrate Judge  
Geraldine Soat Brown

**EXEMPLAR PROFFER OF FACTS CONCERNING THE  
ARRINGTON PLAINTIFFS' INDIVIDUAL EXPERIENCES**

[REDACTED VERSION, PUBLICLY FILED]

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## **I. INTRODUCTION**

Plaintiffs Derek Owens, Angelica Palacios and Kyle Solomon submit the following exemplar proffer of facts concerning the *Arrington* Plaintiffs based on the facts in the record.

## **II. FACTS**

### **A. Derek Owens**

#### **1. Derek Owens' Pre-College Concussion History**

1. Before attending college at the University of Central Arkansas ("UCA"), Derek Owens received one concussion while playing football with Russellville High School in Arkansas.<sup>1</sup>

#### **2. Pre-Participation Documents Regarding Injuries or Concussion**

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

,,2

3. [REDACTED]

[REDACTED]

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<sup>1</sup> OWENS17.

<sup>2</sup> OWENS-UCA0000032 (document designated confidential by Defendant). Plaintiff Owens reserves all arguments in opposition to the NCAA's anticipated use of this evidence as a defense.



**3. Derek Owens' Football Experience at University of Central Arkansas**

4. Neither the NCAA nor UCA provided baseline testing or education to students regarding concussions before Owens started to play.<sup>4</sup>

5. Owens suffered his second concussion in June 2008 during a “voluntary” summer team practice at UCA (without coaches) before his freshman year.<sup>5</sup> Owens was told by UCA’s head coach and quarterback coach that he should attend the practices, with 90 percent of the football team typically in attendance.<sup>6</sup> UCA did not have any trainers or physicians on site and during one practice, without pads or helmets, Owens was hit in the head from behind.<sup>7</sup> After practice, Owens called his parents, telling them he was dizzy, he was having difficulty seeing, and he did not think he could drive.<sup>8</sup> He did not return to the summer practices.<sup>9</sup> No one at UCA followed up with him.<sup>10</sup>

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<sup>3</sup> OWENS-UCA0000036 (document designated confidential by Defendant). Plaintiff Owens reserves all arguments in opposition to the NCAA’s anticipated use of this evidence as a defense.

<sup>4</sup> Owens Resp. Interrog. No. 1, 3.

<sup>5</sup> Owens Resp. Interrog. No. 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*; OWENS-UCA0000007-08, at OWENS-UCA0000008.

6. On September 4, 2008, Owens suffered his third concussion and second collegiate concussion.<sup>11</sup> Owens was knocked unconscious following a hit by a linebacker in a practice.<sup>12</sup>

According to notes taken by a UCA student athletic trainer:

“Athlete complain[ed] of mild headache after being hit head on in football practice. He lost consciousness upon impact and was roused by the ATC who approached him first. When he was roused he described tingling sensation throughout his whole body. After confirming that the athlete had full sensation and movement in all extremities and that he had no neck or back pain he was allowed to get up and walk off the field. He stated he had mild headache and that he felt nauseated in the evaluation that followed. He denied any diplopia or tinnitus. Athlete was experiencing anterograde amnesia as he could not remember three words that the ATS had given him throughout the evaluation. His retrograde memory was normal however. Athlete stated he felt very tired and cold while in the ATR after the injury occurred. He had to be roused approximately four times from sleeping while sitting in the ATR. He was also experiencing photophobia. Athlete has previous history of concussions. He stated he has had three in the last three years. His last one occurred approximately one year ago while he was playing football. He experienced moderate headaches and nausea and vomiting [sic]. He saw doctor for the injury and after one week of no activity was released by the same doctor... Mental status was slightly abnormal in the sense that he was making statements and asking questions which were out of place.”<sup>13</sup>

7. Diagnosed by the student athletic trainer with having a “mild concussion,” Owens’ personalized treatment plan reflected the following:

Athlete and his roommate were sent home with list of signs and symptoms to look for throughout the night. He was instructed not

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<sup>11</sup> OWENS-UCA0000007-08; Report of Robert C. Cantu, M.A., M.D., F.A.C.S., F.A.C.S.M., (*Arrington* Dkt # 180) (“Cantu Report”), ¶ 243.

<sup>12</sup> Owens Resp. Interrog. No. 1.

<sup>13</sup> *Id.* at OWENS-UCA0000007.

to take pain killers for his headache as this could mask the symptoms of his concussion. Modalities are not warranted for concussion so none will be used. Athlete was instructed to go home and rest and not to lift weights or do any kind of strenuous activity until he was instructed he could do those activities again. Re-evaluate daily until signs and symptoms have ceased. Athlete will perform stress test before he can re-enter activity. Athlete was informed that he could not re-enter practice or activity until he was cleared by an ATC. Athlete will be monitored until his symptoms subside. Immediate referral is not warranted although he was told to report to the ER if he experienced any of the symptoms listed on his informational sheet over night. If he continues to have symptoms or his symptoms get worse over the next couple of days, he will be referred.<sup>[14]</sup>

8. No one from UCA called Owens' family, nor provided serial evaluation post-concussion.<sup>15</sup> Moreover, despite telling Owens' roommates he had a severe concussion, Owens was not referred to a physician for evaluation.<sup>16</sup> Rather, the UCA trainers returned Owens to his dorm room, told his roommates that Owens had a "severe concussion," and asked his roommates to wake him up every couple of hours to make sure he was okay.<sup>17</sup> Subsequently, Owens' teachers complained that he was falling asleep in class and he reported he could not control falling asleep in class.<sup>18</sup>

9. On September 5, 2008, a UCA athletic trainer examined Owens, [REDACTED]

[REDACTED]

[REDACTED]

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<sup>14</sup> OWENS-UCA0000007-08.

<sup>15</sup> Owens Resp. Interrog. No. 1.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> OWENS003618; Owens Resp. Interrog. No. 2. *See also* OWENS3618 (reflecting September 8, 2008 email indicating Owens missed class due likely because of his concussion).





10. On September 7, 2008, Owens attempted to rejoin practice but was pulled from practice because he had not been cleared to play.<sup>20</sup> He still reported having a headache.<sup>21</sup> The athletic trainer had Owens do a series of sit-ups push-ups and jumping after which he performed Romberg's and Singleton's tests, which reflected normal results.<sup>22</sup> The trainer reported that Owens did not acquire the headache from the test but, approximately ten minutes after the test was complete, Owens stated that he felt "cloudy."<sup>23</sup> As a result, Owens was not permitted to continue the functional testing or practice.<sup>24</sup> According to the trainer's notes: "He was informed of the dangers of continuing with activity after concussion, especially since he has already had three prior to this one. He was informed of second impact syndrome and the dangers associated with it. He was advised not to lie about his symptoms at any point in time and to inform us of any change in his health status."<sup>25</sup> However, at no time did the athletic trainer refer Owens to a

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<sup>19</sup> OWENS-UCA0000007-08, at OWENS-UCA0000008 (document designated confidential by Defendant).

<sup>20</sup> OWENS-UCA0000007-08.

<sup>21</sup> OWENS-UCA0000008.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

physician's care or for neurological testing.<sup>26</sup> This was contrary to the Consensus Best Practices.<sup>27</sup>

11. On September 9, 2008, Owens again reported to the athletic training room for re-evaluation.<sup>28</sup> [REDACTED]<sup>29</sup> [REDACTED]

[REDACTED]<sup>30</sup> However, despite continuing to be symptomatic with a dull headache behind his eyes and feeling "really tired," the athletic trainer permitted Owens to lift weights [REDACTED]

[REDACTED]<sup>31</sup> Allowing a student athlete to lift weights while still symptomatic is against Consensus Best Practices.<sup>32</sup>

12. On September 10, 2008, Owens' mother contacted the athletic trainer and told him about the June 2008 concussion.<sup>33</sup> The trainer discussed the June 2008 concussion with Owens, who confirmed that he had lost consciousness and "his whole body tingled."<sup>34</sup> [REDACTED]

[REDACTED]<sup>35</sup> [REDACTED]

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<sup>26</sup> *Id.*

<sup>27</sup> Cantu Report, ¶ 247.

<sup>28</sup> OWENS-UCA0000008 (document designated confidential by Defendant).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Cantu Report, ¶ 248.

<sup>33</sup> Owens Resp. Interrog. No. 1.

<sup>34</sup> OWENS-UCA0000007-08.

<sup>35</sup> *Id.* at OWENS-UCA0000008.

13. The team doctor cleared Owens to return to the practice team on September 16, 2008.<sup>36</sup> Before clearing him, Owens completed a stress test that included sit-ups, push-ups, jumping, jogging and sprinting.<sup>37</sup> It lasted approximately 10-15 minutes during which he did not have report problems or symptoms.<sup>38</sup>

14. Subsequently, Owens' headaches returned.<sup>39</sup> On July 28, 2009, while home from school, Owens visited his family doctor regarding headaches.<sup>40</sup> Owens reported that the headaches began in May 2009 following a football tackle.<sup>41</sup> Owens reported "bitemporal throbbing headaches" occurring every 2 to 3 weeks, which "will make him sick to his stomach," often vomiting, as well as light sensitivity.<sup>42</sup> Based on his examination, the physician noted "Headaches that sound migrainous," and he counseled Owens "about different ways to manage headaches," including "using Zomig nasal spray."<sup>43</sup>

15. Owens reported this doctor's visit in writing to UCA on an August 10, 2009.<sup>44</sup> Owens reported that, since his UCA spring physical, he had received medical attention for "Migraines; saw doctor + got medicine; just taking when needed."<sup>45</sup> An athletic trainer signed the form.<sup>46</sup> [REDACTED] the trainer did not

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<sup>36</sup> OWENS-UCA0000007-08, OWENS-UCA00000053.

<sup>37</sup> OWENS-UCA00000008.

<sup>38</sup> *Id.*

<sup>39</sup> OWENS0000004.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> OWENS-UCA00000075 (document designated confidential by Defendant).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

refer Owens to the team physician, did not conduct any baseline or neurological testing, and did not counsel Owens regarding concussions.<sup>47</sup>

16. After the season, on December 29, 2009, Owens again saw his family doctors, because he was having a “difficult time keeping up with his studies,” with decreased grades, “and he has generally not felt well for some time now.”<sup>48</sup> Owens reported a lack of energy, poor sleeping, “pretty frequent headaches” and stress.<sup>49</sup> The physician’s impression noted “stress and possibly low grade depression.”<sup>50</sup>

17. Owens reported this visit to UCA on April 22, 2010 in a “Medical History Update” form.<sup>51</sup> Yet, UCA did not refer Owens to the team physician, did not conduct any baseline or neurological testing, and did not counsel Owens regarding concussions.<sup>52</sup> Rather, Owens played the Fall 2009 season without any inquiry by UCA into the cause of his symptoms. Owens was cleared by UCA without limitations to participate in all sports.<sup>53</sup>

18. On or about June 8, 2010, UCA implemented its Concussion Protocol and Management Plan.<sup>54</sup>

19. For the first time on August 8, 2010, UCA conducted baseline testing of Owens using the Sport Concussion Assessment Tool 2.<sup>55</sup> Also for the first time in 2010, Owens

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<sup>47</sup> *Id.*

<sup>48</sup> OWENS05.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> OWENS-UCA0000011.

<sup>52</sup> OWENS-UCA0000012.

<sup>53</sup> *Id.*

<sup>54</sup> S000015-19.

<sup>55</sup> OWENSUCA0000048-49, OWENSUCA20000017-19; OWENS-UCA2000019.

apparently received the NCAA's one-page document called "Concussion: A Fact Sheet for Student-Athletes." <sup>56</sup>

20. On September 25, 2010, during an away game against Tulsa, Owens received a fifth concussion during a punt return.<sup>57</sup> His mom could see that he hit his head.<sup>58</sup> The fact that Owens was hit hard was documented in a local newspaper story that reported on the hit.<sup>59</sup>

21. No one from the team checked on Owens when he returned to the sidelines.<sup>60</sup> Owens described that when he returned to the sidelines, his head was throbbing, he felt pressure in his head, his head felt like it had swelled in size, and he heard ringing in his ears.<sup>61</sup> He had difficulty standing and getting his helmet off.<sup>62</sup> On the way home from the game on the team bus, Owens texted his mother and told her he had a migraine.<sup>63</sup> Owens spoke to two assistant trainers on the bus and told them of his symptoms, and they provided Owens with medication, which he assumed to be ibuprofen or Tylenol.<sup>64</sup> The trainers did not document the symptoms or treatment, nor refer him to the head trainer, team physician or for follow-up care.<sup>65</sup> This conduct was against Consensus Best Practices.<sup>66</sup>

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<sup>56</sup> OWENS-UCA0000050; OWENS-UCA20000019; OWENS000340.

<sup>57</sup> Owens Resp. Interrog. No. 1; Cantu Report, ¶ 256.

<sup>58</sup> Owens Resp. Interrog. No. 1.

<sup>59</sup> OWENS000739.

<sup>60</sup> Owens Resp. Interrog. No. 1.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Cantu Report, ¶ 257.

#### **4. Derek Owens' Post-Football Experience**

22. During Spring 2011, Owens sought help from his head coach for his ongoing symptoms, including his migraines.<sup>67</sup> His coach did not refer him to the team physician, have him examined or provide any counseling or support.<sup>68</sup>

23. On June 20, 2011, Owens visited his family doctor regarding his concussion history, memory loss, severe or frequent headaches, and difficulty concentrating.<sup>69</sup> The family doctor referred Owens to a neurologist.<sup>70</sup>

24. On July 20, 2011, Owens met with Dr. Tim Freyaldenhoven, a neurologist, for a neurologic evaluation.<sup>71</sup> Dr. Freyaldenhoven's notes reflect that Owens experienced headaches after his concussion and connects them to football: "he does have a headache for 5 seconds, or five minutes, or the rest of the game after he gets hit."<sup>72</sup> Owens further reported decreased academic performance, test anxiety and having "to stay up the night prior and cram for tests."<sup>73</sup> And, Dr. Freyaldenhoven's notes reflect that Owens "is concerned because he doesn't have memories of certain significant events in the past. He had a trip to Branson just before college that he has no recollection of."<sup>74</sup>

25. Dr. Freyaldenhoven concluded that "he has likely had several concussions in addition to those diagnosed. His apparent decline academically is also worrisome. His mother has a history of headaches which sound migrainous and he has other family members with that

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<sup>67</sup> Owens Resp. Interrog. No. 2.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> OWENS000006-07.

<sup>71</sup> OWENS000008-10.

<sup>72</sup> OWENS000008.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

diagnosis.”<sup>75</sup> Dr. Freyaldenhoven noted his experience that “migraineurs are somewhat prone to concussions.”<sup>76</sup> And, he concluded that Owens “may also have underlying ADD and depression which can certainly contribute to his academic decline.”<sup>77</sup> Dr. Freyaldenhoven also identified a connection between concussions and depression: “closed head injury is associated with an increased risk for depression.”<sup>78</sup>

26. Dr. Freyaldenhoven’s notes stated that Owens should “refrain from activities with a high risk of contact injuries,” as “[h]e certainly has proven himself to be prone to concussions.”<sup>79</sup> Dr. Freyaldenhoven further concluded “that there is a reasonable probability that his academic decline is related, directly or indirectly, to his history of concussions.”<sup>80</sup> Dr. Freyaldenhoven prescribed Owens a trial of Cymbalta to help with mood and concentration and also referred him for formal neuropsychological testing to document Owens’ current functioning levels.<sup>81</sup>

27. On August 2, 2011, Owens’ mother informed UCA’s head athletic trainer of Owens’ concussions, his symptoms and his current neurology appointments.<sup>82</sup>

28. On August 23, 2011, Owens attended a neurocognitive evaluation with Dan Johnson, PhD, a clinical neuropsychologist.<sup>83</sup> Regarding his cognitive symptoms, Owens reported “short term memory problems, decreased learning capacity, impoverished sustained

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<sup>75</sup> OWENS000010.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> OWENS-UCA0000002.

<sup>83</sup> OWENS-JOHNSON000002-04.

attention/concentration, slowed processing speed, mental ‘fog’ or ‘haze,’ and decline in test taking/academic achievement.”<sup>84</sup> In addition, he reported emotional symptoms such as “significant anxiety, frustration, discouragement, increased irritability, and mood swings.”<sup>85</sup> And, he reported physical symptoms as well, i.e., “near constant, daily headaches of varying severity which cause pain, distract and exacerbate both [h]is cognitive and emotional symptoms.”<sup>86</sup>

29. During the battery of neurocognitive tests administered by Dr. Johnson, Dr. Johnson found that Owens “perform[ed] well within expectations across many functional cognitive domains,” including regarding overall level of cognition, basic academic performances, formal language tasks, visual/special-construction tasks, abstract reasoning/problem solving.<sup>87</sup> “There were; however, areas of concern - highlighted by less than optimal verbal learning curve, significant ease of distraction via proactive interference (introduction of new information interferes with consolidation/storage of previously just learned information), wildly fluctuating inconsistent attention/concentration, variable/inconsistent processing speed, and less than optimal short term visual memory recall.”<sup>88</sup> “Based on the constellation of current objective neurocognitive findings,” Dr. Johnson concluded that “Derek is likely experiencing significant post concussive syndrome symptoms, which are adversely impacting his cognition in several key areas, as well as emotional/behavioral status.”<sup>89</sup>

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<sup>84</sup> OWENS-JOHNSON000002.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> OWENS-JOHNSON000003.

<sup>88</sup> *Id.*

<sup>89</sup> OWENS-JOHNSON000005.



30. Dr. Johnson added: “There appears to be a significant relationship between the patient’s concussions and the onset of cognitive and emotional/behavioral symptoms Derek currently is experiencing.”<sup>90</sup> And he agreed that Owens should not play football his senior year.<sup>91</sup>

31. Subsequently, Owens provided his coach with a copy of a July 20, 2011 letter from Dr. Freyaldenhoven which stated: “I have suggested that [Owens] refrain from activities with a high risk of contact injuries.”<sup>92</sup> He also provided his coach with a copy of the report from Dr. Johnson, which provided: “...Derek is likely experiencing significant post concussive syndrome symptoms, which are adversely affecting his cognition in several key areas, as well as emotional/behavioral status. \*\*\* The decision to forego his senior year of football appears to be a wise one. There appears to be a significant relationship between the patient’s concussions and the onset of cognitive and emotional/behavioral symptoms Derek currently is experiencing.”<sup>93</sup>

32. In a letter dated December 6, 2011, Dr. Johnson drafted a letter to UCA, stating that Owens “underwent an extensive neurodiagnostic assessment...to evaluate/assess his cognitive/neurological issues.”<sup>94</sup> In the letter, Dr. Johnson conveyed what “appears to be a significant relationship between the patient’s concussions and the onset of cognitive and emotional/behavioral symptoms Derek is currently experiencing.”<sup>95</sup> He also added that “[t]he patient’s plummeting GPA over the past several semesters is a common consequence of post

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Owens Resp. Interrog. No. 2.

<sup>93</sup> *Id.*

<sup>94</sup> OWENS-JOHNSON0000005.

<sup>95</sup> *Id.*

concussive symptoms experienced.”<sup>96</sup> Because Owens’ performance “was likely adversely impacted in a significant manner” by concussions, Dr. Johnson suggested that it would be “appropriate and prudent” for Owens “to re-take select coursework from past semesters without penalty.”<sup>97</sup>

33. Since that time, Owens has struggled academically and continues to report migraines, moodiness, anxiety, feeling “short-fused,” depression, trouble concentrating and short-term memory problems.<sup>98</sup>

## **5. Derek Owens’ Individual Damages**

34. As of April 29, 2013, Owens had incurred medical expenses and costs to date of at least \$7,212.89 for treatment related to his concussions and post-concussion syndrome.<sup>99</sup> Since that time, his medical expenses have risen exponentially due to brain surgery, the necessity of which he contends was a result of his concussion history.

35. Owens continues to struggle academically.<sup>100</sup> Owens continues to suffer from migraines, moodiness, anxiety, feeling “short-fused,” depression, trouble concentrating and short-term memory problems, and requires ongoing medical treatment.<sup>101</sup>

36. Owens seeks payment of all past, present and future medical costs from the NCAA.<sup>102</sup>

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> OWENS-MHC0000022-23, at OWENS-MHC22; OWENS-JOHNSON0000002-04, at OWENS-JOHNSON0000003-04.

<sup>99</sup> Plaintiffs’ Supplemental Response to Certain Interrogatories and Plaintiffs’ Rule 26(a)(1)(A)(iii) Disclosures at 4-5.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

37. As of April 29, 2013, Owens also had incurred \$5,540.25 in tuition, room and housing costs as a result of his scholarships being revoked upon being required to leave University of Central Arkansas' football team due to his concussions and post-concussive syndrome.<sup>103</sup> Owens anticipates incurring additional costs in the future to complete his undergraduate education.<sup>104</sup>

**B. Angelica Palacios**

**1. Angelica Palacios' Pre-College Concussion History**

38. Prior to attending Ouachita Baptist University ("OBU") and playing soccer, Angelica Palacios advised OBU in writing that she had received multiple concussions while playing soccer for club teams.<sup>105</sup>

39. Palacios sustained her first concussion in June 2008 while playing soccer for a club team named Polaris.<sup>106</sup> After sustaining the concussion, Palacios was taken out of the game.<sup>107</sup> Approximately one week later, after experiencing nausea, headaches, and a sore neck, Palacios was seen by a physician, who instructed her not to engage in physical activity for another week.<sup>108</sup>

40. Palacios sustained her second pre-collegiate concussion on April 10, 2009 while playing for a club team called the Sting.<sup>109</sup> Palacios jumped to head a corner kick and was elbowed in the temple by an opposing team member, with Palacios falling to the ground and

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<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> PALACIOS-OBU0000072-76, at PALACIOS-OBU0000072, Palacios Resp. Interrog. No. 2; PALACIOS-ARCHER0000014-15, PALACIOS-ARCHER0000052.

<sup>106</sup> PALACIOS-OBU72; Palacios Resp. Interrog. No. 2.

<sup>107</sup> Palacios Resp. Interrog. No. 2.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

hitting her head on the ground.<sup>110</sup> Palacios was instructed to refrain from physical activity for two weeks.<sup>111</sup> After the second concussion, Palacios began wearing protective headgear.<sup>112</sup>

## **2. Pre-Participation Documents Regarding Injuries or Concussion**

41. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED],<sup>113</sup>

42. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> PALACIOS-OBUE2 (document designated confidential by Defendant). Plaintiff Palacios reserves all arguments in opposition to the NCAA's anticipated use of this evidence as a defense.



**3. Angelica Palacios' Soccer Experience at Ouachita Baptist University**

43. Shortly before matriculating to OBU, on or about August 2010, Palacios was required to have a physical examination with an OBU athletic trainer.<sup>115</sup>

44. OBU evaluated Palacios with ImPACT testing, but did not provide any further baseline testing, nor provided education regarding concussions or the potential for long-term consequences from the concussions.<sup>116</sup>

45. Before her sophomore year, OBU implemented a concussion management plan; however, it fell short of the standards in the field.<sup>117</sup> Moreover, OBU did not, in fact, follow the concussion management plan in managing Palacios' collegiate concussion.<sup>118</sup>

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<sup>114</sup> PALACIOS-OUACHITA20000942 (emphases in original) (document designated confidential by Defendant). Plaintiff Palacios reserves all arguments in opposition to the NCAA's anticipated use of this evidence as a defense.

<sup>115</sup> Palacios Resp. Interrog. No. 1; PALACIOS-OB0000058-61.

<sup>116</sup> Palacios Resp. Interrog. No. 3.

<sup>117</sup> PALACIOS-OB0000087-90; Cantu Report, ¶ 204.

46. On September 13, 2011, Palacios was “headed” by another soccer player during OBU practice, colliding with that player.<sup>119</sup> According to the trainers’ notes:

Athlete walked off the field during soccer practice holding her left eye. She stated that “she got headed in the eye by soccer player in front of her.” Upon inspection, a contusion was noted above her left eye. When asked, the athlete said “she felt little dizzy and had headache, but also stated that she had the headache before practice began from cold”. She also said that she took Nyquil before practice for her cold. Ice was immediately applied to the contusion for 15 minutes and again 45 minutes later. She was advised to continue to ice it periodically for 15 minutes through the evening. The probability of concussion was discussed and instructions were emailed to the athlete to take the IMPACT test in her room the next day.<sup>[120]</sup>

47. The OBU training staff gave her ice to apply to her face and sent her to her dorm room.<sup>121</sup> Palacios’ eye swelled shut and she developed a black eye.<sup>122</sup> Contrary to the Consensus Best Practices, no one from the OBU training staff checked on Palacios in the hours after she sustained the concussion, nor did they refer her to a physician for care.<sup>123</sup>

48. According to trainer notes dated September 14, 2011:

“Athlete came to the Athletic Training room as instructed. Upon inspection, edema and ecchymosis was noted in and around left eye. The athlete could not open her left eye with out assistance; however, pupils were equal and reactive. Slight hemorrhage in lower lateral corner of her sclera was also noted. No vision deficit and athlete was walking normal (no balance issues). Upon palpation of the athlete’s forehead, no crepitus was found, though

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<sup>118</sup> Cantu Report, ¶ 204.

<sup>119</sup> PALACIOS-OB0000042.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*; Cantu Report, ¶ 276.

pain was present. No other signs or symptoms were noted at this time.”<sup>124]</sup>

OBU did not refer Palacios to the team physician for treatment against consensus best practices.<sup>125</sup>

49. Palacios took an ImPACT test on September 14, 2011.<sup>126</sup> When compared to her baseline, Palacios reported a number of symptoms related to concussion, as well as a different Cognitive Efficiency Index score:<sup>127</sup>

	August 17, 2010 ImPACT Clinical Report (Palacios-OBU-48)	September 14, 2011 ImPACT Clinical Report (Palacios-OBU-43)
Cognitive Efficiency Index <sup>128</sup>	0.52	0.39
Total Symptom Score (Includes such symptoms as headache, nausea, light sensitivity, concentration difficulties, and more)	2 Total Symptoms	26 Total Symptoms

50. The above results are one indicator that Palacios was experiencing symptoms from her concussion.<sup>129</sup> Based on these results, OBU should have immediately referred Palacios

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<sup>124</sup> PALACIOS-OBU0000042.

<sup>125</sup> Cantu Report, ¶ 277.

<sup>126</sup> PALACIOS-OBU0000043-47; Palacios Resp. Interrog. No. 2.

<sup>127</sup> PALACIOS-OBU0000043-47.

<sup>128</sup> “The Cognitive efficiency Index measures the interaction between accuracy percentage correct and speed (reaction time) in seconds on the Symbol Match test. This score was not developed to make return to play decisions but can be helpful in determining the extent to which the athlete tried to work very fast on symbol match decreasing accuracy or attempted to improve their accuracy by taking more deliberate and slow approach (jeopardizing speed). The range of scores is from approximately zero to approximately .70 with mean of .34. A higher score indicates that the athlete did well in both the speed and memory domains on the symbol match test. A low score (below .20) means that they performed poorly on both the speed and accuracy component. If this score is a negative number the test taker performed very poorly on the reaction time component.” PALACIOS-OBU0000043-47, at PALACIOS-OBU0000044.

<sup>129</sup> Cantu Report, ¶ 279.

to a physician skilled in the diagnosis, management and treatment of concussions.<sup>130</sup> OBU's failure to do so was a violation of the Consensus Best Practices.<sup>131</sup>

51. According to trainer notes for September 15, 2011: "Athlete was withheld from practice and continued to ice her eye. Edema and ecchymosis were still present and she could not open her eye."<sup>132</sup>

52. According to trainer notes for September 16, 2011, Palacios was referred to a physician, not to check for concussion related issues but rather "to check for bleeding behind her cornea. No bleeding was found and athlete was subsequently released to practice."<sup>133</sup> The medical records for this day do not reflect that any concussion-related testing was performed.<sup>134</sup>

53. Palacios continued to experience headaches in the following days.<sup>135</sup> On September 17, 2011, Palacios vomited, was nauseated and had a severe headache.<sup>136</sup> Thus, Palacios attended soccer practice dressed in non-athletic clothing.<sup>137</sup> When Palacios did not run with the team, her coach informed her that she should be running with the team.<sup>138</sup> When Palacios stated that she had a concussion and was not supposed to run, the coach became

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<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> PALACIOS-OB0000042.

<sup>133</sup> *Id.*

<sup>134</sup> PALACIOS-KLUCK0000010.

<sup>135</sup> Palacios Resp. Interrog. No. 2.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*



angry.<sup>139</sup> The coach informed Palacios that a recruit was watching practice and asked Palacios if she was trying to embarrass him in front of the recruit.<sup>140</sup>

54. Palacios then stated that the trainers told her that if something was wrong she should not participate.<sup>141</sup> The coach told Palacios not to listen to the trainers and that, “you know if you can run.”<sup>142</sup> The fact that the coach was allowed to overrule the trainers is in direct contravention to the Consensus Best Practices.<sup>143</sup>

55. The coach then asked a nearby trainer who stated – after confirming with the head trainer – that Palacios could run, but that she should stop running if her head started hurting worse.<sup>144</sup> The fact that the trainer cleared Palacios to play despite being symptomatic was clearly not in accord with Consensus Best Practices.<sup>145</sup>

56. Palacios was sent to her dorm room to change into athletic clothing.<sup>146</sup> On her way to her dorm, she called her mother and informed her what was happening.<sup>147</sup> When Palacios returned to practice, she ran one lap but started to feel sick.<sup>148</sup> Her coach told her that she should go sit out and that she should plan on sitting out for a long time because her mother called him

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<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> Palacios Resp. Interrog. No. 2.

<sup>142</sup> *Id.*

<sup>143</sup> Cantu Report, ¶ 284.

<sup>144</sup> Palacios Resp. Interrog. No. 2.

<sup>145</sup> Cantu Report, ¶ 284.

<sup>146</sup> Palacios Resp. Interrog. No. 2.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

and told him she should not participate due to her head injury.<sup>149</sup> OBU did not refer Palacios to a physician or conduct any further testing.<sup>150</sup>

57. On September 19, 2011, Palacios reported significant pain. First, she went to see a chiropractor.<sup>151</sup> Then, her parents took her to the emergency room, for an evaluation of her left orbital and facial area following the injury while playing soccer.<sup>152</sup> She reported dizziness and nausea with headache, reporting to the hospital for increased left eye/periorbital pain, which continued even after rest and after use of over the counter medications.<sup>153</sup> Palacios received a CT scan, with no abnormalities reported.<sup>154</sup> She received a diagnosis and discharge instructions related to, among other things, (1) closed head injury, (2) contusion, and (3) subconjunctival hemorrhage (a collection of blood under the lining of the eye).<sup>155</sup> The doctor informed Palacios that she needed at least two more weeks of rest before she could do any physical activity.<sup>156</sup>

#### **4. Angelica Palacios' Post-Soccer Experience**

58. Following her September 17, 2011 premature return to play at her coach's instance, Palacios did not return to the OBU soccer team and retired from soccer.<sup>157</sup>

#### **5. Angelica Palacios' Individual Damages**

59. As of April 29, 2013, Palacios had incurred medical expenses and costs of at least \$4,549.00 for treatment related to her concussions and post-concussion syndrome.<sup>158</sup>

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<sup>149</sup> Palacios Resp. Interrog. No. 2; PALACIOS-OB0000042.

<sup>150</sup> *Id.*

<sup>151</sup> PALACIOS-KLESMIT0000002-05; PALACIOS-KLESMIT0000006-07; PALACIOS-KLESMIT0000008.

<sup>152</sup> PALACIOS-MANSFIELD27.

<sup>153</sup> PALACIOS-MANSFIELD39.

<sup>154</sup> PALACIOS-MANSFIELD40.

<sup>155</sup> PALACIOS-MANSFIELD0000034-37; PALACIOS-MANSFIELD0000047-59, at PALACIOS-MANSFIELD0000059.

<sup>156</sup> Palacios Resp. Interrog. No. 5.

<sup>157</sup> Palacios Tr. at 8:1-5, 9:15-23, 15:19-23.

60. Palacios also incurred at least \$23,684.83 in tuition, room and housing costs as a result of her scholarships being revoked upon being required to leave Ouachita Baptist University's soccer team as a result of her concussions.<sup>159</sup>

**C. Kyle Solomon**

**1. Kyle Solomon's Pre-College Concussion History.**

61. Prior to attending the University of Maine ("Maine") and playing hockey, Kyle Solomon received his first pre-collegiate concussion in or about 2000 while playing for the Long Island Royals at a game in upstate New York.<sup>160</sup> He recalls taking a blind-side hit, having an immediate headache, and wanting to go to sleep.<sup>161</sup>

62. [REDACTED]

[REDACTED] <sup>162</sup> [REDACTED]

[REDACTED]

[REDACTED]

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<sup>158</sup> Plaintiffs' Supplemental Response to Certain Interrogatories and Plaintiffs' Rule 26(a)(1)(A)(iii) Disclosures at 5-7.

<sup>159</sup> *Id.*

<sup>160</sup> Solomon Resp. Interrog. No. 1.

<sup>161</sup> *Id.*

<sup>162</sup> SOLOMON-LAWRENCE000013 (document designated confidential by Defendant).

<sup>163</sup> SOLOMON-LAWRENCE000030 (document designated confidential by Defendant).

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63. \_\_\_\_\_

165.

The diagram shows a laser beam incident on a sample. The scattered light is collected by a detector. The setup is labeled with 'Laser', 'Sample', 'Detector', and 'Scattered light'.

64. A week later, Solomon continued to experience effects of the concussion.<sup>167</sup> In a letter dated from November 16, 2005 from a treating neurologist, the doctor noted: “At this time Kyle continues to suffer from Post Concussion Headaches that prevent him from engaging in full time studies and exams to the best of his capabilities. Please excuse him at this time from the above, and make available these exams and assignments at a later date.”<sup>168</sup>

65. \_\_\_\_\_

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66. On March 3, 2007, Solomon experienced his third pre-collegiate concussion while playing hockey for the Boston Junior Bruins.<sup>170</sup> [REDACTED]

<sup>164</sup> SOLOMON-LAWRENCE-000039 (document designated confidential by Defendant).

<sup>165</sup> SOLOMON-LAWRENCE000044-45 (document designated confidential by Defendant).

<sup>166</sup> SOLOMON-LAWRENCE000045 (document designated confidential by Defendant).

167 SOLOMON000425.

168 *Id.*

<sup>169</sup> SOLOMON\_VAILLANCOURT15, 22, 23 (document designated confidential by Defendant).

[REDACTED]

[REDACTED].<sup>171</sup> After making a pass, Kyle turned toward the boards, he was hit hard and his head went into the boards.<sup>172</sup> He tried to get up, but his legs went out from underneath him.<sup>173</sup> After making his way to the bench, Plaintiff recalls feeling completely punch drunk, being taken to the locker room, and not allowed to return to the game.<sup>174</sup> [REDACTED]

[REDACTED]

[REDACTED],<sup>175</sup> [REDACTED]

[REDACTED],<sup>176</sup> [REDACTED]

[REDACTED]<sup>177</sup>

## **2. Pre-Participation Documents Regarding Injuries or Concussion**

67. [REDACTED]

[REDACTED]

[REDACTED]<sup>178</sup> [REDACTED]

[REDACTED]

[REDACTED]

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<sup>170</sup> Solomon Resp. Interrog. No. 1; UMASS\_MEMORIAL01 (document designated confidential by Defendant).

<sup>171</sup> UMASS\_MEMORIAL01 (document designated confidential by Defendant).

<sup>172</sup> Solomon Resp. Interrog. No. 1.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> UMASS\_MEMORIAL04 (document designated confidential by Defendant).

<sup>176</sup> *Id.* at 5.

<sup>177</sup> UMASS\_MEMORIAL02 (document designated confidential by Defendant).

<sup>178</sup> SOLOMON-UMAINE195 (document designated confidential by Defendant).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **3. Kyle Solomon's Hockey Experience at the University of Maine.**

68. Kyle Solomon played men's ice hockey for Maine from 2008-2010. Maine was aware of Solomon's concussion history.<sup>181</sup> For example, on October 8, 2008, in a medical note by Maine team physician Dr. John D. West, Dr. West noted Solomon "has had a history of concussions in the past and comes in now as a freshman hockey player."<sup>182</sup>

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<sup>179</sup> *Id.* Plaintiff Solomon reserves all arguments in opposition to the NCAA's anticipated use of this evidence as a defense.

<sup>180</sup> *Id.* Plaintiff Solomon reserves all arguments in opposition to the NCAA's anticipated use of this evidence as a defense.

<sup>181</sup> SOLOMON-UMAINE0000105-111, at SOLOMON-UMAINE0000105.

<sup>182</sup> SOLOMON-UMAINE0000171.

69. During his freshman hockey season on November 6, 2008, Solomon was administered the ImPACT baseline test.<sup>183</sup> However, Solomon was not provided any catastrophic injury education, including but not limited to regarding concussions or the long-term consequences of brain injuries.<sup>184</sup>

70. Solomon sustained his first collegiate concussion, during a November 9, 2008 Maine hockey game.<sup>185</sup> Midway through the second period, Solomon was blindsided by an opposing player and hit his head above the right ear on the ledge of the boards and immediately lost consciousness.<sup>186</sup> When he awoke, he was seeing “stars” and experienced double vision for approximately 10 minutes.<sup>187</sup> The team trainer removed him from the ice.<sup>188</sup> The trainer and team physician examined Solomon in the locker room.<sup>189</sup> Solomon was asked to follow the path of the trainer’s finger and also the path of a flashlight.<sup>190</sup> Solomon was not administered a baseline test or any other tests.<sup>191</sup> The trainer observed that Solomon’s eyes were dilated.<sup>192</sup> Solomon received stitches from Dr. West and returned to the game in the third period.<sup>193</sup> Returning a player that lost consciousness to play during the same game is contrary to the Consensus Best Practices.<sup>194</sup> Returning Solomon to the game put him at direct risk for permanent

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<sup>183</sup> SOLOMON-UMAINE0000105; SOLOMON-UMAINE0000184.

<sup>184</sup> Solomon Resp. Interrog. No. 4.

<sup>185</sup> Solomon Resp. Interrog. No. 1.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> Cantu Report, ¶ 291.

brain injury from the slightest hit.<sup>195</sup> Neither the trainer or physician provided the serial follow-up to a concussion required in all standards.<sup>196</sup> Moreover, neither the trainer nor the physician documented the incident.<sup>197</sup> In fact, despite the fact that Maine had administered the ImPACT baseline test at the outset of his career, no further testing was done post-injury to determine whether or when Solomon was asymptomatic from the injury.<sup>198</sup>

71. After the game, Solomon was told by the trainer to go back to his dorm room and rest.<sup>199</sup> At this time, Solomon lived alone and there was no one to monitor his condition.<sup>200</sup> Solomon was incoherent when he spoke with his father that evening.<sup>201</sup> Leaving an athlete with a head injury alone in the immediate hours after a head injury is contrary to the Consensus Best Practices and put Solomon directly at risk for harm.<sup>202</sup>

72. Solomon was symptomatic for several days thereafter, suffering from headaches and sensitivity to light.<sup>203</sup> Solomon was evaluated by Dr. West on November 19, 2008 for his sutures received from the hit.<sup>204</sup> According to Dr. West's exam notes: "We also looked at the sutures just behind his right ear from the laceration he had at game time ten days ago and the laceration has healed up well. It is at the junction of the hairline. We agreed today we would leave the sutures in through the weekend series with Merrimac where the helmet pads rub in this

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<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> Solomon Resp. Interrog. No. 1.

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> Cantu Report, ¶ 292.

<sup>203</sup> Solomon Resp. Interrog. No. 1.

<sup>204</sup> SOLOMON-UMAINE0000166.



area, rather than take them out where we can't Steri-strip them. We will remove them the following day after the weekend series."<sup>205</sup> Again, the physician failed to conduct any neuropsychological or neurocognitive testing, to compare against Solomon's baseline, to determine whether he could be cleared to play.<sup>206</sup>

73. On September 9, 2009, the team physician passed away unexpectedly.<sup>207</sup> Maine did not replace him for the duration of Solomon's tenure on the hockey team.<sup>208</sup> Failure to have a team physician is against Consensus Best Practices in a collision sport at high risk of concussion, as well as catastrophic, injury.<sup>209</sup>

74. On December 26, 2009, Solomon visited the emergency room and his father provided the records to Maine on January 4, 2010.<sup>210</sup> Solomon's symptoms included low energy, cold sweats, decreased appetite (since before Christmas), headaches, pressure behind his eyes, and abdominal pain.<sup>211</sup>

75. On February 26, 2010, Solomon was struck in the throat and helmet cage during a hockey game and was transported by ambulance to the hospital.<sup>212</sup> Solomon complained of throat pain and headache.<sup>213</sup> Notes from an otolaryngology consultation indicate a diagnosis of

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<sup>205</sup> SOLOMON-UMaine0000166.

<sup>206</sup> Cantu Report, ¶ 293.

<sup>207</sup> See John D. West III M.D. Obituary, BANGOR DAILY NEWS, available at <http://obituaries.bangordailynews.com/obituaries/bdnmaine/obituary.aspx?n=john-d-west&pid=132824009> (last visited September 2, 2015).

<sup>208</sup> Solomon Tr. 82:4-9, 117:4.

<sup>209</sup> *Id.* ¶ 294.

<sup>210</sup> SOLOMON-UMaine0000135-155, at SOLOMON-UMaine0000135.

<sup>211</sup> *Id.*

<sup>212</sup> SOLOMON-UMaine0000126-27, at SOLOMON-UMaine0000126; SOLOMON-UMaine0000128.

<sup>213</sup> *Id.*

“Blunt trauma to the laryngeal skeleton suffering hemorrhage of the right vocal cord.”<sup>214</sup>

Solomon was instructed to “do no strenuous activity for at least one week, perhaps two weeks.”<sup>215</sup> Based on his symptoms, it appears that Solomon suffered his second NCAA concussion, during this game.<sup>216</sup> Solomon was cleared to play by a physician with respect to his throat injury on March 3, 2010.<sup>217</sup> However, Maine did not conduct the ImPACT or other baseline testing, or otherwise test Solomon for concussion.<sup>218</sup>

76. On March 10, 2010, Solomon suffered his third NCAA concussion, during practice from a “soft” elbow to the side of his head.<sup>219</sup> No team physician existed, was present or consulted.<sup>220</sup> The following day, Maine administered the ImPACT test and diagnosed Solomon with a Grade 3 concussion by the trainer.<sup>221</sup>

77. According to Maine’s ImPACT Clinical Report, Solomon’s scores and symptoms were as follows:<sup>222</sup>

<b>Composite Scores</b>	<b>11/6/2008 Baseline Test</b>	<b>3/11/2010 Post-injury Test</b>	<b>3/12/2010 Symptom Inventory</b>	<b>3/13/2010 Symptom Inventory</b>	<b>3/14/2010 Symptom Inventory</b>	<b>3/15/2010 Symptom Inventory</b>	<b>3/17/2010 Symptom Inventory</b>
<b>Memory composite (verbal)</b>	86 (35%)	90 (55%)					
<b>Memory composite (visual)</b>	34 (<1%)	55 (4%)					

<sup>214</sup> SOLOMON-LAWRENCE0000071.

<sup>215</sup> *Id.*

<sup>216</sup> Cantu Report, ¶ 296.

<sup>217</sup> SOLOMON-UMAINE0000176-78, at SOLOMON-UMAINE0000176.

<sup>218</sup> *Id.*

<sup>219</sup> SOLOMON-UMAINE0000105-111, at SOLOMON-UMAINE0000105.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

Composite Scores	11/6/2008 Baseline Test	3/11/2010 Post-injury Test	3/12/2010 Symptom Inventory	3/13/2010 Symptom Inventory	3/14/2010 Symptom Inventory	3/15/2010 Symptom Inventory	3/17/2010 Symptom Inventory
Visual motor speed composite	35.48 (39%)	31.60 (19%)					
Reaction time composite	0.51 (77%)	0.75 (1%)					
Impulse control composite	11	4					
Total Symptom Score	0	9	14	7	7	2	2

78. The impact of these scores is that the visual memory composite and reaction times are grossly impaired following the concussion and the visual memory composite scores were grossly impaired prior to the concussions raising second questions about the validity of the testing.<sup>223</sup> These questions should have been evaluated prior to clearing him to play.<sup>224</sup>

79. Solomon experienced headaches, dizziness, drowsiness, light sensitivity, nausea, and difficulty falling asleep for at least seven days following the injury.<sup>225</sup> The trainer failed to refer Solomon to a physician for follow up care.<sup>226</sup>

80. Approximately two weeks after sustaining the concussion, Plaintiff was cleared for return to play while symptomatic.<sup>227</sup> Solomon was throwing up at the time and still had not been seen by or referred to a physician.<sup>228</sup> Solomon telephoned his father and said that he did

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<sup>223</sup> Cantu Report, ¶ 298.

<sup>224</sup> *Id.*

<sup>225</sup> SOLOMON-UMaine0000105; Cantu Report, ¶ 298.

<sup>226</sup> Cantu Report, ¶ 299.

<sup>227</sup> Solomon Resp. Interrog. No. 3.

<sup>228</sup> *Id.*

not feel right and that he felt like a different person, including changes to his personality, depression, and feeling disconnected from reality.<sup>229</sup> It is against Consensus Best Practices to return an athlete to play while symptomatic.<sup>230</sup>

#### **4. Kyle Solomon's Post-Hockey Experience**

81. On April 9, 2010, Dr. Cantu examined Solomon and concluded that Solomon's brain sustained severe trauma and diagnosed post-concussion syndrome.<sup>231</sup> He advised Solomon of the risks of second impact syndrome, restricted him to walking and restricted him from lifting anything over five pounds.<sup>232</sup> Based on Dr. Cantu's recommendation, Solomon retired from hockey.<sup>233</sup>

#### **5. Kyle Solomon's Individual Damages**

82. As of April 29, 2013, Solomon had incurred medical expenses and costs of at least \$7,212.89 for treatment related to his concussions and post-concussion syndrome.<sup>234</sup>

83. Solomon continues to suffer from seizures, headaches (including migraines caused by sensitivity to light, working on a computer, or stress), short term memory loss, intense psychological distress, and anxiety. He has struggled with schoolwork and been placed on restrictions regarding homework and examinations, avoiding physical activities beyond walking, and avoiding unnecessary mental activity, and requires ongoing emergency and non-emergency medical treatment.<sup>235</sup>

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<sup>229</sup> Plaintiff's Resp. Interrog. Nos. 1, 3.

<sup>230</sup> Cantu Report, ¶ 300.

<sup>231</sup> *Id.* ¶ 301.

<sup>232</sup> *Id.*; SOLOMON000002-6; SOLOMON000007-9; SOLOMON000010-12; SOLOMON000013.

<sup>233</sup> Cantu Report, ¶ 300.

<sup>234</sup> Plaintiffs' Supplemental Response to Certain Interrogatories and Plaintiffs' Rule 26(a)(1)(A)(iii) Disclosures at 7-9.

<sup>235</sup> *Id.*

84. Solomon has also incurred at least approximately \$3,000 in tuition, room and housing costs as a result of his scholarships being revoked upon being required to leave University of Maine's hockey team due to his concussions and post-concussion syndrome.<sup>236</sup>

**D. Adrian Arrington**

**1. Adrian Arrington's Pre-College Concussion History**

85. [REDACTED]

[REDACTED] <sup>237</sup> [REDACTED]

[REDACTED] <sup>238</sup>

86. [REDACTED]

[REDACTED] <sup>239</sup>

87. During an EIU physical examination on or about August 22, 2005, Arrington reported having suffered a mild "head injury or concussion," which appears to be from a "[st]inger from Football" in 2003.<sup>240</sup> EIU passed Arrington for the exam with "[n]o reservations or contraindications for sports participation."<sup>241</sup>

**2. Pre-Participation Documents Regarding Injuries or Concussion**

88. There is no evidence that EIU required Arrington to sign pre-participation documents regarding injury or concussions.

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<sup>236</sup> *Id.*

<sup>237</sup> ARRINGTON-EIU524 (document designated confidential by Defendant).

<sup>238</sup> ARRINGTON-EIU527 (document designated confidential by Defendant).

<sup>239</sup> ARRINGTON-EIU834 (document designated confidential by Defendant).

<sup>240</sup> ARRINGTON-EIU00000512-13, at ARRINGTON-EIU00000512.

<sup>241</sup> *Id.*

### 3. Adrian Arrington's Football Experience at Eastern Illinois University

89. Arrington attended and played football at EIU from 2005-2009. Arrington was not given any baseline testing prior to his freshman season.<sup>242</sup> Moreover, neither the NCAA nor EIU provided any education regarding concussions.<sup>243</sup>

90. On April 14, 2007, Arrington received a concussion during a scrimmage, [REDACTED] [REDACTED]”<sup>244</sup> The athletic trainer implemented a “treatment plan” that reflected “no activity until concussion symptoms subside.”<sup>245</sup> The trainer did not refer Arrington to a physician, nor conducted any baseline or neuropsychological testing.<sup>246</sup> Rather, the trainer merely requested that Arrington report any symptoms.<sup>247</sup> Arrington reported headaches on April 15 and April 17 and reported feeling better by April 18.<sup>248</sup> He returned to no contact practice on April 23, with a full return to practice on April 25, 2007.<sup>249</sup> During this time, Arrington was only asked if he was symptomatic.<sup>250</sup> He was not tested in accordance with the Consensus Best Practices on concussion management.<sup>251</sup>

91. Prior to the 2007-08 season, neither the NCAA nor EIU conducted any baseline testing nor provided education regarding concussions.<sup>252</sup>

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<sup>242</sup> ARRINGTON-EIU834.

<sup>243</sup> Cantu Report, ¶ 219.

<sup>244</sup> ARRINGTON-EIU00000841 (document designated confidential by Defendant).

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*; Cantu Report, ¶ 220.

<sup>247</sup> ARRINGTON-EIU00000841.

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> ARRINGTON-EIU00000841; Cantu Report, ¶ 220.

<sup>251</sup> ARRINGTON-EIU00000841; Cantu Report, ¶ 220.

<sup>252</sup> Cantu Report, ¶ 221.

92. On October 6, 2007, Arrington suffered his third diagnosed concussion in a game against Eastern Kentucky.<sup>253</sup> He returned to full activity approximately one week later on October 12, 2007.<sup>254</sup> Following this concussion, Arrington should have been baseline tested prior to returning to play.<sup>255</sup> He did not undergo the required and consensus recommended battery of testing required before he returned to play.<sup>256</sup>

93. Prior to the 2008-09 season, neither the NCAA nor EIU conducted any baseline testing nor provided education regarding concussions.<sup>257</sup>

94. During the November 15, 2008 game against Austin Peay State, Arrington suffered his fourth diagnosed concussion during a football game, complaining of dizziness and confusion with short term memory loss.<sup>258</sup> Arrington did not finish the game.<sup>259</sup>

95. According to an EIU SportsMedicine Clinic Evaluation Form two days later dated November 17, 2008, Arrington complained of headache and confusion.<sup>260</sup> The evaluation noted that Arrington “had confusion all day on 11/15/08,” but did not have any symptoms on November 16 or November 17.<sup>261</sup> The evaluating physician recommended that appointments for an MRI and neurology consultations be scheduled and that blood work be drawn.<sup>262</sup>

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<sup>253</sup> ARRINGTON-EIU00000838.

<sup>254</sup> *Id.*

<sup>255</sup> Cantu Report, ¶ 222.

<sup>256</sup> ARRINGTON-EIU00000838; Cantu Report, ¶ 222.

<sup>257</sup> Arrington Resp. Interrog. No. 3; Cantu Report, ¶ 223.

<sup>258</sup> ARRINGTON-EIU00000655; ARRINGTON-EIU00000714-15, at ARRINGTON-EIU 00000714. *See also* ARRINGTON-EIU00000656 (diagnosis of “Multiple Concussions” by Dr. Karl Rudert).

<sup>259</sup> ARRINGTON-EIU00000714-15, at ARRINGTON-EIU00000715.

<sup>260</sup> ARRINGTON-EIU00000431; ARRINGTON-EIU00000657.

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

Nonetheless, the physician, Dr. Aja Lystilla, concluded that Arrington was “ok for football as long as no return of symptoms.”<sup>263</sup> [REDACTED]

96. Dr. Lystilla diagnosed Arrington with confusion and memory loss and added that he “[d]iscussed that [he had] no definitive reason to keep [Arrington] off football but would consider the ramifications of play as he has already had two previous concussions and memory loss without a known blow, could definitely be a harbinger of some mild traumatic brain injury. However, I cannot definitively restrict him from play. He is comfortable with this discussion.”<sup>265</sup>

97. After an MRI, but without the required battery of tests that are standard for a neurological assessment, Arrington was cleared to play [REDACTED]

98. After intervening practices and a game against Tennessee Tech, on about December, 1, 2008, Arrington complained again of “confusion/memory loss.”<sup>267</sup> [REDACTED]

263 ARRINGTON-EIU431.

<sup>264</sup> ARRINGTON-EIU658 (document designated confidential by Defendant).

265 *Id.*

<sup>266</sup> ARRINGTON-EIU00000714-15, at ARRINGTON-EIU00000715 (document designated confidential by Defendant). *See also* Cantu Report, ¶ 225.

267 ARRINGTON-EIU00000424.



[REDACTED] (1) schedule an appointment with Dr. Harry Bremer, a neurologist, and (2) [REDACTED]

[REDACTED]<sup>268</sup>

99. On February 12, 2009, an athletic trainer from EIU accompanied Arrington to see Dr. Bremer.<sup>269</sup> Despite the fact that the athletic trainer should have kept copious records of Arrington's concussion history and communicated this history to the physician,<sup>270</sup> Dr. Bremer was only made aware of one concussion per Dr. Bremer's report: "At this time, he has had one possible concussion related to a closed head injury. He has had three other spells of amnesia for which there is no history for head injury. It is probably appropriate to continue with contact sports."<sup>271</sup> Dr. Bremer further noted that Arrington reported: "Recurring spells of amnesia, etiology indeterminate," with potential "concerns for possible complex partial seizures."<sup>272</sup>

[REDACTED]  
[REDACTED]  
[REDACTED],<sup>273</sup>

100. [REDACTED]

[REDACTED]<sup>274</sup> [REDACTED]  
[REDACTED]

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<sup>268</sup> ARRINGTON-EIU00000673 (document designated confidential by Defendant).

<sup>269</sup> ARRINGTON-EIU00000674-76, at ARRINGTON-EIU00000674.

<sup>270</sup> Cantu Report, ¶ 227.

<sup>271</sup> ARRINGTON-EIU676 (document designated confidential by Defendant); Cantu Report, ¶ 227.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> ARRINGTON-EIU00000684 (document designated confidential by Defendant).

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101. On June 15, 2009, Arrington again complained of confusion.<sup>276</sup>

[117]

According to Dr. Lystilla's notes:

Today, he comes after having multiple spells today. He was confused during an on field football practice, after practice while lifting and again while in the office today. These spells occur suddenly. He seems to be disoriented, has dilated pupils and some lip smacking activity and is unable to recount the events of the day, but is not lethargic and he does complain of a headache during this timeframe.<sup>[278]</sup>

Dr. Lystila started Arrington on Keppra 500 mg twice a day, providing him with a prescription for Ativan as well.<sup>279</sup> Again, Arrington was instructed not to drive and a follow-up appointment

275 *Id.*

<sup>276</sup> ARRINGTON-EIU00000687; ARRINGTON-EIU714-15, at ARRINGTON-EIU00000714 (document designated confidential by Defendant).

<sup>277</sup> ARRINGTON-EIU00000714-15, at ARRINGTON-EIU00000715.

278 *Id.*

279 *Id.*

was scheduled with Dr. Bremer.<sup>280</sup> [REDACTED]

[REDACTED] 281

102. On June 18, 2009, Arrington visited again with Dr. Bremer.<sup>282</sup> At that time, Dr. Bremer raised concerns regarding Arrington's concussion history:

I am raising concerns as to any concussions he may have had. If he has had three concussions, he should abstain from all further contact sports. He understands that he should discuss this with his athletic trainer.<sup>[283]</sup>

103. On July 13, 2009, accompanied by an EIU athletic trainer, Arrington again visited Dr. Lystilla after reporting "he does not feel right."<sup>284</sup> The notes reflect:

They report that he has been acting as though he is having a seizure all day. He did go to the Student Health Center earlier today, was given Dramamine and told to come back later. He has a large contusion to his forehead. He is uncertain how he got it.<sup>[285]</sup> Scratches to both ankles, again uncertain how they got there. He complains of nausea, vomiting and headache."<sup>[286]</sup>

[REDACTED]

Seizure, likely due to poor medication compliance; however, with confusion and nausea with headache, unclear if possible head injury versus concussion. Will admit him to the hospital for

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<sup>280</sup> *Id.*

<sup>281</sup> ARRINGTON-EIU687 (document designated confidential by Defendant).

<sup>282</sup> ARRINGTON-EIU688-89, at ARRINGTON-EIU00000688.

<sup>283</sup> *Id.*

<sup>284</sup> ARRINGTON-EIU00000692-93, at ARRINGTON-EIU00000692; ARRINGTON-EIU00000694; ARRINGTON-EIU695-99, at ARRINGTON-EIU00000695.

<sup>285</sup> According to ARRINGTON-EIU00000707-08, at ARRINGTON-EIU00000708, Arrington stated to Dr. Bremer "that with the July 12-13, 2009, episode, that he was told that a TV fell on his head and caused the bruising."

<sup>286</sup> ARRINGTON-EIU00000694-95.

observation, routine neuro checks, CT of his brain with and without contrast and continue his Keppra.<sup>[287]</sup>

[REDACTED] .<sup>288</sup>

104. According to the report of Arrington's hospital observation stay, Arrington potentially suffered his fifth concussion, was not cleared to return to play, and was told to follow up with the trainer.<sup>289</sup>

105. On July 20, 2009, Arrington was evaluated at EIU's SportsMedicine Clinic.<sup>290</sup>

[REDACTED] .<sup>291</sup> [REDACTED]

[REDACTED] .<sup>292</sup>

106. On July 23, 2009, Arrington saw Dr. Bremer, the neurologist, for another visit.<sup>293</sup>

[REDACTED] .<sup>294</sup>

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<sup>287</sup> *Id.*

<sup>288</sup> ARRINGTON-EIU694 (document designated confidential by Defendant).

<sup>289</sup> ARRINGTON-EIU00000695-99.

<sup>290</sup> ARRINGTON-EIU00000704.

<sup>291</sup> ARRINGTON-EIU704 (document designated confidential by Defendant).

<sup>292</sup> *Id.*

<sup>293</sup> ARRINGTON-EIU00000700-01, at ARRINGTON-EIU00000700 (document designated confidential by Defendant).

<sup>294</sup> *Id.*

107. Dr. Bremer recommended “no football at EIU this fall,” writing in his treatment notes that “[i]n all likelihood, most physicians would recommend avoiding contact sports.”<sup>295</sup> In response, Arrington asked to get a second opinion.<sup>296</sup>

108. Subsequently, on August 12, 2009, Arrington wrote to the EIU Director of Athletics Barbara Burke, requesting to be allowed to return to play because it was his senior year and because he had “earned the scholarship with hard work.”<sup>297</sup>

109. On August 14, 2009, accompanied by a graduate assistant athletic trainer, Arrington again saw Dr. Bremer.<sup>298</sup> Shifting from the earlier recommendation that Arrington avoid all contact sports, Arrington was cleared to begin preparing for a return to football.

According to Dr. Bremer:

He has had at least two definite concussions. He understands that if he has anymore, that he should not be involved in contact sports at all

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We agree to the following [among other points]:

Providing that EIU sports approves of such, he may:

1. Start with at least three days of noncontact drill and conditioning in the weight room, etc.
2. He will continue on Keppra 750 mg, 1 b.i.d.
3. He will have a Levetiracetam level obtained at EIU health services with results faxed to me (note given to patient to have such.
4. He will not have any alcohol at all.

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<sup>295</sup> ARRINGTON-EIU701.

<sup>296</sup> ARRINGTON-EIU714.

<sup>297</sup> ARRINGTON000002-03, at ARRINGTON000002.

<sup>298</sup> ARRINGTON-EIU00000707.

5. He will not miss any Keppra doses. If so, he should not drive, or engage in contact sports activities for at least one week.
6. He is scheduled to see Dr. Evans at SIU in Springfield for a second opinion on August 27, 2009.<sup>[299]</sup>

110. On August 15, 2009, Arrington attended football practice.<sup>300</sup> Prior to the Fall 2009 season, EIU did not conduct any baseline testing nor did EIU or the NCAA provide any education regarding concussions.<sup>301</sup>

111. After multiple football games, on or about November 10, 2009 “Adrian had another episode today” and went to the emergency room and was “seen with episodes of confusion.”<sup>302</sup>

112. On December 4, 2009, Arrington had a return appointment with Dr. Bremer.<sup>303</sup> Dr. Bremer recounted Arrington’s November 10, 2009 confusional episode.<sup>304</sup> Dr. Bremer also noted that Arrington “has not played on the football team for the last three weeks.”<sup>305</sup> Arrington “inquired about the need for any excuse from his studies because of his medical illness,” mentioning “he has had several doctors’ appointments beside the above noted symptoms.”<sup>306</sup> However, Dr. Bremer did “not see a need to excuse him from his final examinations, as he has not had any ongoing long-term disability from his studies.”<sup>307</sup>

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<sup>299</sup> ARRINGTON-EIU707-08, at ARRINGTON-EIU00000707. *See also* ARRINGTON-EIU714.

<sup>300</sup> ARRINGTON-EIU714-15, at ARRINGTON-EIU00000714.

<sup>301</sup> Cantu Report, ¶ 234.

<sup>302</sup> *Id.* *See also* ARRINGTON-SBL0000111-12, at ARRINGTON-SBL0000111.

<sup>303</sup> ARRINGTON-BREMER00000045-46, at ARRINGTON-BREMER00000045.

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

#### **4. Adrian Arrington's Post-Football Experience**

113. While Arrington did not subsequently return to football after November 10, 2009, the evidence indicates that he continues to suffer seizures, chronic severe headaches, depression, nausea and vomiting, photophobia, confusion, short-term memory loss/cognitive impairment, insomnia, and spells of unresponsiveness.<sup>308</sup>

114. On October 14, 2011, Arrington attended a "Multiplanar, multiecho MRI of the brain" exam at Sarah Bush.<sup>309</sup> The report of the exam by Dr. Aldo Ruffalo notes that "[t]here is persistent cavum septum pellucidum and persistent cavum septum vergae," as well as "volume loss identified in the right hippocampal region with linear signal abnormality present which is bright on T2-weighted pulse sequences. Findings are most likely on the basis of right mesial temporal sclerosis."<sup>310</sup> Dr. Bremer advised Arrington: "[t]he report indicates concerns for possible loss of brain tissues in the right temporal region, which is known to cause seizures."<sup>311</sup>

#### **5. Adrian Arrington's Individual Damages**

115. As of April 29, 2013, Arrington had incurred medical expenses and costs of at least \$76,567.69 for treatment related to his concussions and post-concussion syndrome.<sup>312</sup>

116. At that time, Arrington continued to suffer from seizures, chronic severe headaches, depression, nausea and vomiting, photophobia, confusion, short-term memory

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<sup>308</sup> ARRINGTON000084-86.

<sup>309</sup> ARRINGTON-EIU244, 255.

<sup>310</sup> ARRINGTON-EIU255.

<sup>311</sup> ARRINGTON-EIU244.

<sup>312</sup> Plaintiffs' Supplemental Response to Certain Interrogatories and Plaintiffs' Rule 26(a)(1)(A)(iii) Disclosures at 2-3.

loss/cognitive impairment, insomnia, and spells of unresponsiveness, and required ongoing emergency and non-emergency medical treatment.<sup>313</sup>

117. As of April 29, 2013, Arrington had also incurred at least \$19,023.09 in tuition, room and housing costs as a result of his scholarships being revoked upon being required to leave Eastern Illinois University's football team due to his concussions and post-concussive syndrome.<sup>314</sup>

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Respectfully submitted,

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<sup>313</sup> *Id.*

<sup>314</sup> *Id.*



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